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Habitat

SEE: Environmental protection.

Harbor areas

Washington State Constitution, Article XV, Harbors and Tide Waters

Section 1. Harbor Line Commission and Restraint on Disposition.

The legislature shall provide for the appointment of a commission whose duty is shall be to locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays and inlets of this state, wherever such navigable waters lie within or in front of the corporate limits of any city, or within one mile thereof on either side. Any harbor line so located or established may thereafter be changed, relocated or reestablished by the commission pursuant to such provision as may be made therefor by the legislature. The state shall never give, sell or lease to any private person, corporation, or association any rights whatever in the waters beyond such harbor lines, nor shall any of the area lying between any harbor line and the line of ordinary high water, and within not less than fifty feet nor more than two thousand feet of such harbor line (as the commission shall determine) be sold or granted by the state, nor its rights to control the same relinquished, but such area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

Section 2. Leasing and Maintenance of Wharves, Docks, Etc.

The legislature shall provide general laws for the leasing of the right to build and maintain wharves, docks and other structures, upon the areas mentioned in section one of this article, but no

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lease shall be made for any term longer than thirty years, or the legislature may provide by general laws for the building and maintaining upon such areas wharves, docks, and other structures.

Section 3. Extension of Streets Over Tide Lands.

Municipal corporations shall have the right to extend their streets over intervening tide lands to and across the area reserved as herein provided.

RCW 79.90.020: "Harbor area."

Whenever used in chapters 79.90 through 79.96 RCW the term "harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution, which shall be forever reserved for landings, wharves, streets and other conveniences of navigation and commerce.

RCW 79.92.010: Harbor lines and areas to be established.

It shall be the duty of the board of natural resources acting as the harbor line commission to locate and establish harbor lines and determine harbor areas, as required by section 1 of Article XV of the state Constitution, where such harbor lines and harbor areas have not heretofore been located and established.

RCW 79.90.080: Board of natural resources--Records--Rules and regulations.

The board of natural resources acting as the harbor line commission shall keep a full and complete record of its proceedings relating to the establishment of harbor lines and the determination of harbor areas. The board shall have the power from time to time to make and enforce rules and regulations for the carrying out of the provisions of chapters 79.90 through 79.96 RCW relating to its duties not inconsistent with law.

RCW 79.90.015: "Outer harbor line."

Whenever used in chapters 79.90 through 79.96 RCW the term "outer harbor line" means a line located and established in navigable waters as provided in section 1 of Article XV of the state Constitution, beyond which the state shall never sell or lease any rights whatever to private persons.

RCW 79.90.025: "Inner harbor line."

Whenever used in chapters 79.90 through 79.96 RCW the term "inner harbor line" means a line located and established in navigable waters between the line of ordinary high tide or ordinary high water and the outer harbor line, constituting the inner boundary of the harbor area.

WAC 332-30-108: Establishment of new harbor areas.

- (1) The policies and standards in this section apply to establishment of new harbor areas by the harbor line commission under Article XV of the Washington Constitution and to establishment of new harbor areas in Lake Washington by the commissioner of public lands under RCW 79.94.240.
- (2) New harbor areas will only be established to serve the following purposes:
 - (a) Reserving adequate urban space for navigation and commerce facilities; and
 - (b) Preventing urban development from disrupting navigation.
- (3) New harbor areas will only be established when a need is demonstrated by existing development or by plans, studies, project proposals or other evidence of development potential in, or waterward of, the proposed harbor area.
- (4) Unless there is an overriding state-wide navigation and commerce need, new harbor areas will only be established when:
 - (a) Compatible with local land use and shoreline management plans;
 - (b) Supported by the city, county and port district;
 - (c) The area is physically and environmentally suitable for navigation and commerce purposes; and
 - (d) Necessary support facilities and services are likely to be available.
- (5) The shoreline length of a new harbor area established along a city's waterfront will be determined by the need and purposes to be served and by conformance with subsection (4) of this section.
- (6) Harbor line placement standards.
 - (a) Harbor lines will be placed to serve constitutional harbor area purposes as they relate to the individual site in question.
 - (b) Harbor lines will be placed to provide practical development guidance. Harbor lines will relate to navigation and commerce

development which has occurred or can reasonably be expected to occur.

- (c) Inner harbor lines will be placed at the boundary of public aquatic land ownership. Inner harbor lines may be placed waterward of the boundary of public ownership to avoid conflicts with other guidelines in this section.
- (d) Outer harbor lines will generally be placed near the ends of existing conforming structures located on public aquatic lands. The lines shall provide adequate space for navigation and commerce and prevent development from interfering with navigation.
- (e) Unless there is an overriding state-wide navigation and commerce need, harbor lines will be placed in accordance with:
 - (i) Local, state and federal land use plans and environmental regulations;
 - (ii) Maintenance of environmental quality;
 - (iii) Existing abutting harbor lines; and
 - (iv) Existing aquatic land development.

Discussion on harbor areas

Harbor areas are specially designated areas of aquatic lands in front of and near the waterfronts of incorporated cities. According to Article XV of the state Constitution, harbor areas "shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce."

The state Constitution requires the Legislature to appoint a commission to establish Harbor areas. The Legislature has designated the Board of Natural Resources to act as the Harbor Line Commission. The Commission convenes to consider proposals regarding changes to harbor areas, including establishing, relocating or re-establishing inner and outer harbor lines. The Commission has established 31 harbor areas – 26 tidal (marine) and five non-tidal (river or lake) – totaling about 700 acres.

Harbor areas extend along the shoreline to one mile outside the city limits. Inner harbor lines are in navigable waters

between the line of mean high tide or ordinary high water and the outer harbor line, and make up the inner boundary of the harbor area. Outer harbor lines are not less than 50 feet and not more than 2,000 feet from the inner harbor line.

Unlike first and second class tidelands and shorelands, the designation of a harbor area does not change as city limits change, but instead can only be changed by the Commission. Harbor line relocations must maintain or enhance the type and amount of harbor area needed to meet long-term needs of water-dependent commerce and must maintain adequate space for navigational use beyond the outer harbor line.

Designated harbor areas of the state are:

Aberdeen	Lake Washington*
Anacortes	Lake Whatcom*
Bellingham	Marysville
Blaine	Olympia
Bremerton	Pasco*
Charleston	Port Angeles
Cosmopolis	Port Orchard
Edmonds	Port Townsend
Everett	Poulsbo
Gig Harbor	Seattle
Hoquiam	Shelton
Ilwaco	Snohomish
Kalama	Steilacoom
Kennewick*	Tacoma
La Conner	Vancouver
Lake Union	

* indicates those harbors where only the line of navigability has been designated.

HARBOR AREAS: RELOCATIONS

RCW 79.92.020: Relocation of harbor lines by the harbor line commission.

Whenever it appears that the inner harbor line of any harbor area heretofore determined has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board of natural resources acting as the harbor line commission is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of the meander line. All tidelands or shorelands within said inner harbor line so reestablished and relocated, shall belong to the state and may be sold or leased as other tidelands or shorelands of the first class in accordance with the provisions of RCW 79.94.150: PROVIDED, That in all other cases, authority to relocate the inner harbor line or outer harbor line, or both, shall first be obtained from the legislature.

RCW 79.92.030: Relocation of harbor lines authorized by legislature.

The commission on harbor lines is hereby authorized to change, relocate, or reestablish harbor lines in Guemes Channel and Fidalgo Bay in front of the city of Anacortes, Skagit county; in Grays Harbor in front of the cities of Aberdeen, Hoquiam, and Cosmopolis, Grays Harbor county; Bellingham Bay in front of the city of Bellingham, Whatcom county; in Elliott Bay, Puget Sound and Lake Union within, and in front of the city of Seattle, King county, and within one mile of the limits of such city; Port Angeles harbor in front of the city of Port Angeles, Clallam county; in Lake Washington in front of the cities of Renton and Lake Forest Park, King county; Commencement Bay in front of the city of Tacoma, Pierce county; and within one mile of the limits of such city; Budd Inlet in front of the city of Olympia, Thurston county; the Columbia river in front of the city of Kalama, Cowlitz county; Port Washington Narrows and Sinclair Inlet in front of the city of Bremerton, Kitsap county; Sinclair Inlet in front of the city of Port Orchard, Kitsap county; in Liberty Bay in front of the city of Poulsbo, King county; the Columbia river in front of the city of Vancouver, Clark county; Port Townsend Bay in front of the city of Port Townsend, Jefferson county; the Swinomish Channel in front of the city of La Conner, Skagit county; and Port Gardner Bay in front of the city of Everett, Snohomish county, except no harbor lines shall be established west of the easterly shoreline of Jetty

Island as presently situated or west of a line extending S 37° 09' 38" W from the Snohomish River Light (5); in Oakland Bay in front of the city of Shelton, Mason county; and within one mile of the limits of such city; in Gig Harbor in front of the city of Gig Harbor, Pierce county; and within one mile of the limits of such city.

RCW 79.92.035: Modification of harbor lines in Port Gardner Bay.

The harbor line commission shall modify harbor lines in Port Gardner Bay as necessary to facilitate the conveyance through exchange authorized in RCW 79.94.450.

WAC 332-30-116 Harbor line relocation.

Harbor areas are established to meet the needs of navigation and commerce. Harbor line relocations must be consistent with this purpose.

(1) Harbor line relocations should:

- (a) Maintain or enhance the type and amount of harbor area needed to meet long-term needs of water dependent commerce; and
- (b) Maintain adequate space for navigation beyond the outer harbor line.

(2) When in agreement with the above guidelines, consideration of harbor line relocations should include:

- (a) Plans and development guidelines of public ports, counties, cities, and other local, state, and federal agencies;
- (b) Economic and environmental impacts;
- (c) Public access to the waterfront;
- (d) Indian treaty rights;
- (e) Cumulative impacts of similar relocations on water-dependent commerce; and
- (f) The precedent setting effect on other harbor areas.

(3) Procedure.

- (a) Upon receipt of a completed harbor line relocation proposal form and SEPA checklist (if necessary), department of natural resources staff shall arrange for a public hearing.
- (b) Notice of the hearing shall be mailed at least thirty days in advance to the concerned city, county, port district, interest groups, adjacent tide, shore or upland owners and others who

indicate interest; and shall be published at least twenty days in advance in a local newspaper of general circulation.

(c) The hearing, conducted by a hearings officer, shall be held in the county in which the relocation is proposed. Department staff shall present the proposal and preliminary recommendations. The hearing shall be recorded.

(d) Comments may be submitted at the hearing or mailed to the department. Written comments must be postmarked no later than fourteen days after the hearing.

(e) Department of natural resources staff will finalize SEPA compliance (if necessary) and prepare a final report of recommendations to the harbor line commission.

(f) No later than sixty days after the date of the public hearing, the harbor line commission shall consider the staff report and public comments, then approve, modify or deny the relocation. A copy of the commission's resolution shall be sent within ten days to the proponent, the city, county, port district and other parties who have requested it.

HARBOR AREAS: USES AND LEASES

RCW 79.92.060: Terms of harbor area leases.

Applications, leases, and bonds of lessees shall be in such form as the department of natural resources shall prescribe. Every lease shall provide that the rental shall be payable to the department, and for cancellation by the department upon sixty days' written notice for any breach of the conditions thereof. Every lessee shall furnish a bond, with surety satisfactory to the department, with such penalty as the department may prescribe, but not less than five hundred dollars, conditioned upon the faithful performance of the terms of the lease and the payment of the rent when due. If the department shall at any time deem any bond insufficient, it may require the lessee to file a new and sufficient bond within thirty days after receiving notice to do so. Applications for leases of harbor areas upon tidal waters shall be accompanied by such plans and drawings and other data concerning the proposed wharves, docks, or other structures or improvements thereof as the department shall require. Every lease of harbor areas shall provide that, wharves, docks, or other conveniences of navigation and commerce adequate for the public needs, to be

specified in such lease, shall be constructed within such time as may be fixed in each case by the department. In no case shall the construction be commenced more than two years from the date of such lease and shall be completed within such reasonable time as the department shall fix, any of which times may be extended by the department either before or after their expiration, and the character of the improvements may be changed either before or after completion with the approval of the department: PROVIDED, That if in its opinion improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for public needs of commerce and navigation, the department shall require the maintenance of such existing improvements and need not require further improvements.

RCW 79.92.070: Construction or extension of docks, wharves, etc., in harbor areas-New lease.

If the owner of any harbor area lease upon tidal waters shall desire to construct thereon any wharf, dock, or other convenience of navigation or commerce, or to extend, enlarge, or substantially improve any existing structure used in connection with such harbor area, and shall deem the required expenditure not warranted by his right to occupy such harbor area during the remainder of the term of his lease, he may make application to the department of natural resources for a new lease of such harbor area for a period not exceeding thirty years. Upon the filing of such application accompanied by such proper plans, drawings or other data, the department shall forthwith investigate the same and if it shall determine that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for such new lease, such rate of rental shall be a fixed percentage, during the term of such lease, on the true and fair value in money of such harbor area determined from time to time by the department as provided in *RCW 79.92.050. The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements thereon. The department shall, within ninety days from the filing of such application notify the applicant in writing of the terms and conditions upon which such new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days thereafter elect to accept a new lease of such

harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for such harbor area for the term applied for and the existing lease shall thereupon be surrendered and canceled. [Note: RCW 79.92.050 was repealed in 1984.]

RCW 79.92.080: Re-leases of harbor areas.

Upon the expiration of any harbor area lease upon tidal waters hereafter expiring, the owner thereof may apply for a re-lease of such harbor area for a period not exceeding thirty years. Such application shall be accompanied with maps showing the existing improvements upon such harbor area and the tidelands adjacent thereto and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of such application the department of natural resources shall forthwith investigate the same and if it shall determine that the character of the wharves, docks or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which such re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of such lease on the true and fair value in money of such harbor area as determined from time to time by the department of natural resources in accordance with RCW 79.92.050. [Note: RCW 79.92.050 was repealed in 1984.]

RCW 79.92.090: Procedure to re-lease harbor areas.

Upon completion of the valuation of any tract of harbor area applied for under RCW 79.92.080, the department of natural resources shall notify the applicant of the terms and conditions upon which the re- lease will be granted and of the rental fixed. The applicant or his successor in interest shall have the option for the period of sixty days from the date of the service of notice in which to accept a lease on the terms and conditions and at the rental so fixed and determined by the department. If the terms and conditions and rental are accepted a new lease shall be granted for the term applied for. If the terms and conditions are not accepted by the applicant within the period of time, or within such further time, not exceeding three months, as the department shall grant, the same shall be deemed rejected by the applicant, and

the department shall give eight weeks' notice by publication once a week in one or more newspapers of general circulation in the county in which the harbor area is located, that a lease of the harbor area will be sold on such terms and conditions and at such rental, at a time and place specified in the notice (which shall not be more than three months from the date of the first publication of the notice) to the person offering at the public sale to pay the highest sum as a cash bonus at the time of sale of such lease. Notice of the sale shall be served upon the applicant at least six weeks prior to the date thereof. The person paying the highest sum as a cash bonus shall be entitled to lease the harbor area: PROVIDED, That if the lease is not sold at the public sale the department may at any time or times again fix the terms, conditions and rental, and again advertise the lease for sale as above provided and upon similar notice: AND PROVIDED FURTHER, That upon failure to secure any sale of the lease as above prescribed, the department may issue revocable leases without requirement of improvements for one year periods at a minimum rate of two percent.

RCW 79.92.100: Regulation of wharfage, dockage, and other tolls.

The state of Washington shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage, and other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use thereof.

WAC 332-30-109 Harbor area.

- (1) Harbor areas shall be reserved for landings, wharves, streets and other conveniences of navigation and commerce.
- (2) Water dependent commerce shall be given preference over other uses of harbor areas.
- (3) Every consideration shall be given to meeting the expanding need for navigation and water dependent commerce in existing harbor areas.
- (4) Several industries using the same harbor area facility shall be given preference over single industry use.

- (5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses, in areas requiring extensive maintenance dredging.
- (6) Harbor lines may be adjusted, when authorized by the legislature, to provide reasonable opportunity to meet the present and future needs of commerce and navigation.
- (7) In harbor areas where no current constitutional use (navigation and commerce) is called for or practical and other uses are in demand, interim uses may be authorized by the board of natural resources if in the public interest.
- (8) The department will, where in the public interest, promote the conversion of existing nonconforming uses to conforming uses by assisting if possible, such users in resiting their operations and by withdrawing renewal options on affected state harbor area leases.
- (9) The department will promote full development of all existing suitable harbor areas for use by water dependent commerce.
- (10) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from harbor areas by the owner of the structures upon demand by the department or by the department in which case the owner will be assessed the costs of such removal.
- (11) Houseboats are not permitted in harbor areas.
- (12) Resource management cost account portion of the revenue from leasing of harbor areas shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.
- (13) Harbor areas will be managed to produce revenue for the public unless withdrawn as a public place.
- (14) Harbor area lease renewal applications must be returned to the department within sixty days of expiration of prior lease term. If not timely returned, the harbor area involved will be put up for public auction.
- (15) The department will encourage local government, state and federal agencies to cooperate in planning for the following state-wide harbor management needs:
 - (a) Reserve adequate and appropriate space within the jurisdiction to serve foreseeable navigation and commerce development needs.
 - (b) Coordinate plans for aquatic land and upland development so that areas reserved for navigation and commerce will be usable in the future.

- (c) Identify areas where interim uses may be allowed.
- (d) Identify needed changes in harbor lines.
- (e) Minimize the environmental impacts of navigation and commerce development.
- (f) Prevent existing and future interim uses in harbor areas from lowering the suitability of harbor areas for navigation and commerce development.

WAC 332-30-115: Harbor area use classes.

These classes are based on the degree to which the use conforms to the intent of the constitution that designated harbor areas be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(1) Water-dependent commerce. Water-dependent commerce are all uses that cannot logically exist in any other location but on the water and are aids to navigation and commerce. These are preferred harbor area uses. Leases may be granted up to the maximum period allowed by the Constitution and may be renewed. Typical uses are:

- (a) Public or private vessel terminal and transfer facilities which handle general commerce including the cargo handling facilities necessary for water oriented uses.
- (b) Public and private terminal facilities for passenger vessels.
- (c) Watercraft construction, repair, maintenance, servicing and dismantling.
- (d) Marinas and mooring areas.
- (e) Tug and barge companies facilities.
- (f) Log booming.

(2) Water-oriented commerce. Water oriented commerce are commercial uses which historically have been dependent on waterfront locations, but with existing technology could be located away from the waterfront. Existing water-oriented uses may be asked to yield to water dependent commercial uses when the lease expires. New water-oriented commercial uses will be considered as interim uses. Typical uses are:

- (a) Wood products manufacturing.
- (b) Watercraft sales.
- (c) Fish processing.
- (d) Sand and gravel companies.
- (e) Petroleum handling and processing plants.
- (f) Log storage.

(3) Public access. Facilities for public access are lower priority uses which do not make an important contribution to navigation and commerce for which harbor areas are reserved, but which can be permitted providing that the harbor area involved is not needed, or is not suitable for water-dependent commerce. Leases may be issued for periods up to thirty years with possible renewals.

Typical uses are:

- (a) Public fishing piers.
- (b) Public waterfront parks.
- (c) Public use beaches.
- (d) Aquariums available to the public.
- (e) Underwater parks and reefs.
- (f) Public viewing areas and walkways.

(4) Residential use. Residential uses include apartments, condominiums, houseboats, single and multifamily housing, motels, boatels and hotels. Residential uses do not require harbor area locations and are frequently incompatible with water-dependent commerce. New residential uses will not be permitted to locate in harbor areas. This restriction on new leases differentiates residential uses from interim uses. Existing residential uses may be asked to yield to other uses when the lease expires. Proposed renewals of residential leases will require the same analysis as specified for interim uses.

(5) Interim uses. Interim uses are all uses other than water-dependent commerce, existing water-oriented commerce, public access facilities, and residential uses. Interim uses do not require waterfront locations in order to properly function. Leases may only be issued and reissued for interim uses in exceptional circumstances and when compatible with water dependent commerce existing in or planned for the area. See WAC 332-30-137 Nonwater-dependent uses for evaluation standards.

(6) Areas withdrawn are harbor areas which are so located as to be currently unusable. These areas are temporarily withdrawn pending future demand for constitutional uses. No leases are issued.

Discussion on harbor areas: uses and leases

Leases in harbor areas are similar to use authorizations elsewhere, but also follow many unique rules, as described above. SEE ALSO: Use authorizations.

Most importantly, harbor areas are to be used primarily for navigation and commerce. To this end, land uses within harbor areas are ranked in order of their need for waterfront locations. Water-dependent commerce has the highest priority in harbor areas. This priority use includes:

- Public or private terminal and transfer facilities which handle general commerce.
- Public or private terminal facilities for passenger vessels.
- Watercraft construction, repair, and maintenance.
- Marinas and mooring areas.
- Tug and barge company facilities.
- Log booming.

Lower priority goes to existing water-oriented uses. New water-oriented uses and all nonwater-dependent uses are designated as interim uses and are the lowest priority for harbor areas.

New residential uses are not permitted to locate in harbor areas. Existing residential uses in harbor areas may be asked to yield to other uses when their leases expire. Renewal of residential uses in harbor areas will be issued only in exceptional circumstances, and only when compatible with water-dependent commerce existing in or planned for the area – the same standard as for other nonwater-dependent uses.

Because harbor areas are reserved primarily for navigation and commerce, public access uses, while permissible, are ranked below other water-dependent uses in harbor areas, though higher than residential and interim uses. This differs from the high priority normally given to public access uses on all other state-owned aquatic lands. Common public access uses in harbor areas include:

- Public waterfront parks.
- Public fishing piers.
- Public use beaches.
- Aquariums available to the public.

- Underwater parks and reefs.
- Public viewing areas and walkways.

Hold-over status

SEE: Use authorizations.

Houseboats

SEE: Residential uses.